

anticipated. And now we are in a position to make further gains.

In the bill we have on your desk, Mr. President, we cut capital gains from 20 percent to 18 percent, and index it for inflation in the future. That will help the economy. That will make the economy grow faster. That will increase jobs. That will probably raise more money for the Federal Government.

So, Mr. President, we once again, urge you to sign this tax bill. It will be a good thing for the economy. It will be a good thing for American taxpayers. It will be a good thing for American families.

Let's get rid of the marriage penalty. Let's get rid of the death tax. Let's cut taxes across the board for taxpayers. We do that in the tax bill and still save over two-thirds of the budget for debt reduction.

So, Mr. President, let's allow taxpayers to have one-fourth of the surplus. Let's let them keep it. I urge you to rise to the challenge and sign the bill.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. First, Mr. President, I thank Senator NICKLES, the assistant majority leader, for the speech he just delivered. Probably more of us should be making those points on the floor of the Senate today about the importance of the tax cut proposal, what it means to working Americans, and the fact that the President could sign it so it would become the law and we would have a fairer Tax Code. But if he vetoes it, it is going to be a real shame. I appreciate the specifics Senator NICKLES pointed out.

#### NOMINATION OF BRIAN T. STEWART TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Mr. LOTT. Mr. President, in an effort to continue to move forward on judicial nominations, I ask unanimous consent that the Senate immediately proceed to executive session to consider the nomination of Brian Theodore Stewart to be a U.S. District Judge for the District of Utah.

The PRESIDING OFFICER. Is there objection?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. No objection to going to the measure.

Mr. LOTT. The Chair notes there was no objection to that?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I further ask unanimous consent that there be a time agreement on the pending nomination of not to exceed 2 hours under the control of Senator LEAHY and 30 minutes under the control of Senator HATCH.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, we have spent a lot of time talking about this issue.

I spoke to the chairman of the committee today. We really want to try to be helpful and move along these judicial appointments, including the one that is so important to the Senator from Utah, Mr. HATCH.

But we would ask the majority leader if he would modify his request to provide for the same time limitation for those nominees: Berzon, White, and Paez. Maybe having made this suggestion, modification of the time agreement, we could have all these done. We could do it probably in a morning or certainly with a little added time. In fact, we would even be willing to cut down the time or add to the time if the majority leader would agree.

Mr. LOTT. Mr. President, if I could respond to the Senator from Nevada on his proposal. If he can get this agreement I have just propounded worked out, we will be able to move not only this nomination of Mr. Stewart, we will also be able to move tonight the nominees, M. James Lorenz, of California, for the Southern District of California, and Victor Marrero, of New York, for the Southern District of New York.

With regard to the nomination of Ronnie L. White, of Missouri, for the Eastern District of Missouri, we do have a time agreement we had worked out earlier. I think it was for only 35 minutes. It might require more time than that since a lot of time has lapsed, but I am satisfied we will get a time agreement on that, and we will have a vote on that one.

I think there is a possibility we could get some sort of a time agreement to consider also the nominee, Raymond C. Fisher, of California, for the Ninth Circuit, which is a very controversial circuit. But I have not had an opportunity to check on the time on that one.

So I think if we could get an understanding, an agreement with regard to Mr. Stewart, we could, as a matter of fact, move as many as five judges—two in wrapup and three with time agreements and recorded votes. The other two—Berzon and Paez—I will have to go to all of my colleagues to check and see how we can handle those. I have not been able to get a time agreement as yet. I have to confess that I have not tried it lately because I have been trying to move the other judges where there was either not an objection or there were limited objections or we could get time agreements.

So I think this is a way to keep moving the process forward. I remind the Senate that we have moved six Federal judicial nominations over the last 2 weeks and that we have the opportunity tonight to move three more. We have the opportunity, within the next 2 weeks, to move three more. That is pretty good progress. I understand the Judiciary Committee is moving toward, reporting out a number of other nominations.

So I hope we will find a way to work through all this. Everybody knows that this nominee, Stewart, is important to

the chairman of the Judiciary Committee. If we get into a situation where we are not going to move him until we get agreement on all others, then we will wind up with an all stop. I have been through that before. I wish we wouldn't do that. I don't think it is good for the people who have been nominated. Why hold up those who can be cleared or voted on and probably approved because we want to get others who are a major problem and we haven't been able to get cleared?

I will have to object at this time because I haven't had a chance to do a hotline to see how we could handle Raymond Fisher—I would have to check on all three of those. Having said that, I will have to object to that change.

Mr. REID. I say to the majority leader, I think this dialogue on the floor is constructive. I think the suggestion of the leader that we move some of these other people is something we need to do. We, of course, need to have more hearings. I see the ranking member of the Judiciary Committee, who has certainly been engaged in this and has spoken with the Senator from Utah, much more than either you or I, about this issue.

Mr. LOTT. I wish they would work this out, frankly. Then you and I wouldn't have to worry with it.

I did object. The Chair has heard objection?

The PRESIDING OFFICER. Objection was heard.

Mr. REID. We still have the leader's unanimous consent request pending though.

Mr. LOTT. I could make another one, but before I do, I am glad to yield the floor to the Senator.

Mr. LEAHY. If the distinguished majority leader will yield, the distinguished senior Senator from Utah and I have been in discussion within the last 2 or 3 minutes. We are trying to move this along and work it out. I understand the concerns the majority leader has.

As he knows, both the two times I have served here with the Democrats in the majority and the two times I have served with Republicans in the majority, I have always respected the majority leader's prerogatives in bringing things up.

My concern is not that this be a lock-step matter, but I say to my friend from Mississippi—and this is one of the things that concerns many people on this side of the aisle—there were 30 pending judicial nominations that were received by the Senate prior to the Stewart nomination coming, and they deserve our attention, too.

Obviously, I understand the special circumstances of the Stewart nomination. If we work out some of these other things, I expect to be voting for him. But there were 30 ahead of it, not all of which are on the calendar, but were received ahead of it and 6 in front of him on the Senate Executive Calendar. We have concern that they are

going to get consideration, that each of them will be accorded a Senate vote. People should be fair to them all. Some of them have been there for 2 or 3 years, some for a matter of months. What I am trying to do with the distinguished Senator from Utah is work out some kind of understanding where we have Senate votes on the nominations on the Executive Calendar, will have the hearings that are needed to move others along. I was hoping we could work out some kind of a package that the distinguished Republican leader and the distinguished Democratic leader could agree to today, but I don't think we can.

Mr. LOTT. I just offered basically a package that could involve five judges.

Mr. LEAHY. I understand.

Mr. LOTT. I do want to make the point that, as the majority leader, I can nudge a chairman and/or his ranking member, but I am not chairman or ranking of Judiciary. The majority leader can only deal with the nominations that hit the calendar. With the proposal I just made, two would be on the calendar, at which point I would then have the time to see how those might be dealt with.

Mr. LEAHY. With all due respect, the last few years the Senate has moved slower on judicial nominations than any time I think I can remember in my time here. I have attended more judiciary hearings, voted on more judicial nominations, than virtually anybody in this body, with the exception of the distinguished President pro tem, who tells me he may have been doing them in Thomas Jefferson's time. But for the rest of us, I have. I have never seen it go quite so slowly. In 1996, 1997 and again this year the Senate has been moving slowly with respect to a number of judicial nominees.

We are trying to work that out. Obviously, it is not going to get solved today. I do not want to get having to invoke cloture on judicial nominations. I think it is a bad precedent. That may be necessary.

Mr. LOTT. If I could reclaim my time, I agree with you on that. I don't want to do that. I have discouraged it ever since I have been the majority leader. I don't believe we have had cloture on a Federal judge since I have been majority leader. The idea that we would begin defeating Federal judicial nominations with 41 of the 100 Senators' votes, that is a bad thing to start. I hope we will not do it.

I have to try to find a way to force us to some agreements and to force us into some action. I would be inclined to file cloture today. I want to emphasize, I would prefer to vitiate and not do that. I will go ahead and put it in place tonight, but if Senator HATCH and Senator LEAHY will come to me and say, we have something worked out here, or if we can work it out to move these five judges, I will be delighted to move to vitiate that and not go forward with it. Then we can keep this process moving.

Remember, right before the August recess, I was the one who tried to move judges. I would get an objection from the Democratic side, if I didn't include certain judges. Then, if I did it a different way, I would get objections from the Republican side because certain judges weren't included. The net result was, none of them were included.

When I came back, I called Senator DASCHLE and I called Senator HATCH. I said: I am going to start at the beginning. I am going to start with the easiest ones to get done, and if people are going to object, then they will have to object to them one by one. As a result of that, everybody kind of relaxed and we moved six of them. We are now ready to move at least two more, and I thought we could move three more. If we keep this thing going, it has a lubricating effect. When you act, you tend to act.

Let me say this about the vacancies, the number of judges appointed. This Sunday, I am going to be in Cleveland, MS, to attend the investiture of my college roommate, one of the finest men I have ever known in my life. He was nominated by President Clinton to be a Federal judge. He is going to be the North Mississippi Federal judge.

I guess on paper he is a Democrat, but aside from that, he is a great guy and will make a wonderful, ethical judge. But when I attend this meeting, I am going to be basically saying: My good friend, Judge Pepper, goodbye. I hope to see you again some day. You are going to the Federal bench.

I am glad he is going there. He is going to be a credit. But let me tell you, out there, there are not a lot of people saying: Give us more Federal judges. They just are not. For us to be pontificating about this and gnashing, how unfair, this appointment of more Federal judges, it is just not there.

I am willing to do my job. I know they deal with a lot of important issues. I know there is a problem when we don't have a full complement. Some people might argue that we have plenty of Federal judges to do the job. I hope they will do that. I am saying to you, I am trying to help move this thing along, but getting more Federal judges is not what I came here to do.

Mr. LEAHY. If the distinguished leader will yield on that point, I believe, of course, he is gaining himself a higher place in Heaven for the suffering he goes through with this—probably not made up by the office and the limo in the meantime. In Heaven, he will finally have his reward, I am sure.

Mr. LOTT. I look forward to that great day.

Mr. LEAHY. When you get there, you will be able to tell St. Peter that one of the trials you had on Earth was the senior Senator from Vermont, who is your friend, as you know. We have been friends for many years.

On the number of Federal judges, though, I do get letters from lawyers all over the country, and I believe even from the State of Mississippi, from

their trial bar, in several cases where, having paid all kinds of taxes, they now have to hire arbitrators to hear the cases because the dockets are too full. I am hearing from Federal prosecutors all over this country this is a matter of some concern, that because of the speedy trial rules under the Constitution and practice, they are concerned about their cases. There aren't enough judges to try them. So there are some areas where we do have some serious problems. We know that the Chief Justice of the United States has criticized the lack of enough judges to do the work of the courts and the time it takes to get vacancies filled.

We have two judges we could voice vote right now—there would be no objection—James Lorenz and Victor Marrero, Calendar Nos. 213 and 214.

Mr. LOTT. I would be glad to move those. If we can get an agreement on Stewart, they will be moved immediately.

Mr. LEAHY. What I would suggest is this: Obviously, the distinguished leader can file cloture on any motion at any time. I think that is appropriate, and whoever is the majority leader should always have that right. I have always supported that. Such a vote would not ripen, it is my understanding, until Tuesday evening.

Mr. LOTT. Tuesday at 5:30. That would give you and us time to talk more tonight, or Tuesday.

Mr. LEAHY. The Republicans will probably be having a caucus, as we will be, in the normal course of business. Might I suggest to the leader that might be the thing to do. We would have an objection today, he can file the cloture today if he chooses, and still Senator HATCH and I will continue our discussions. He and the distinguished Democratic leader would continue theirs. I think there have been a number of times when the 4 of us, in 5 minutes off the floor, have accomplished more than we could in 5 hours on the floor. Then we can see where we are at that time. We may be in a situation where having prayed about it over the weekend and thought about it—and you have had the great feeling of being in Cleveland, and I didn't know there was a Cleveland, Mississippi.

Mr. LOTT. They don't have a professional football team, but they have an excellent college team, Delta State University.

Mr. LEAHY. I have been in Mississippi a number of times. I have gone down with your distinguished colleague, Senator COCHRAN, in different hearings. I have always enjoyed it. I have always eaten too much, and I have always felt I understood what Southern hospitality means. I tried to reciprocate with his colleague on a visit to Vermont, and it dropped to 30 below zero. He didn't think it was very good reciprocation, so he came back in the summertime.

Mr. LOTT. I would like to make one last point.

Mr. REID. Mr. President, I ask the leader this. I have listened to the two

of you in your dialog. I have a different idea. I think that and I respectfully submit this—we would be better off if you did not file your motion for cloture. You can do that next week. I feel that, knowing the minority as well as I do, we would be better off. If things don't work out by Tuesday at this time, you can still file your motion to invoke cloture.

I don't think we should be filing motions to invoke cloture on these judges. I don't think we need to do that. Give us a little time to work this out. I respectfully submit to my dear friend that I think we would be making a mistake procedurally. I have only been to Mississippi once, and that was when I went to Senator John Stennis' funeral, a man who I had the pleasure of serving with years ago. I had great respect for him. I feel that, in the Stennis way of doing business, we need to do a little more deliberating and less pushing people's backs to the wall. I feel this motion would be the wrong thing.

As I say, I have spoken to the Senator from Utah. I know how badly he wants this judge to be approved. I think you have gone some way this evening in saying that you have mentioned four people that I think we can approve pretty quickly.

Mr. LOTT. Possibly a fifth one. I would have to get clearance on it.

Mr. REID. I say to my friend—and I am not begging; I don't want to do that—I think we would all be better off if the cloture motion were not filed today. If you need to do it, do it Tuesday. That is going to move along, and we are going to be around here next week and the week after. I think we would be better off. Let's not get into a motion to invoke cloture on judges. The big problem is with Ted Stewart from Utah. Let's see if we can work through that.

Mr. LOTT. Is there any possibility that we can get a time agreement on Stewart? I know Senators would like to make themselves heard, perhaps, on that nomination, or perhaps as it relates to other nominees. I have no desire to cut Senators off at will. Maybe the time I asked for was too short, with 2 hours for Senator LEAHY and only 30 minutes for Senator HATCH, where the nominee is from. We can go to 4 hours on each side.

Mr. REID. I respectfully submit that I don't think the time is the issue. I think we have to work our way through a little bit of the politics of this judicial appointment stuff. In my opinion, I think we could do it much easier if there weren't that cloture motion filed.

Mr. LOTT. I have a couple of problems: One, Senator HATCH, I think, feels that I embarked upon a strategy that has disadvantaged him because I started moving judges—6 of them. And now 2 more are ready to go. Then when we got to the ninth one, his judge, we are told, no. Even though you have 8 judges nominated by Democrats, we have one now that is supported by Sen-

ator HATCH, the chairman of the Judiciary Committee, and you can't do that unless we get an agreement to move 5 other judges.

So I understand what you are saying. I really prefer not to do this. But the problem I have now is that I told Senators who have now left that I would do this, and I believe we have told Senators we will have two votes at 5:30 Tuesday. This is one of them. That is my problem. Another problem is time. We are getting to the end of the fiscal year. If we don't do this now and get closure on Judge Stewart, with next week being a four-day week—assuming we can get the Senators to work 4 days—and with five the next week, which are the last 2 weeks of the fiscal year, we are not going to be able to get through any of these judges until October. I hope that we can go ahead and resolve the Stewart matter. I could violate the request, and then we could move five judges, I hope.

Mr. REID. The problem that I have, though—and you already touched upon it—we know where the votes are on this issue. We don't need to have a Federal judge decided on less than a majority vote. So why can't we just wait and see if we can work this out? I think it would be better. I think we are going to be forced into a vote here.

Mr. LOTT. Can you give me a commitment that we will get a vote next week on Judge Stewart?

Mr. REID. Well, the only problem with that is, if we can't work things out, then you will be stuck with the cloture motion. I think it would be better if that were done after we really saw, based upon the feelings that the Judiciary Committee chairman has on this—

Mr. LOTT. I want to pay a compliment to Senator REID. As always, he is persistent, and he is trying to find a solution. That is the way we have to work around here. I appreciate that attitude. I appreciate the way he has done his job since he has been the assistant Democratic leader and whip. So I weigh that carefully.

At this point, I think I will have to go forward with this. But I will be here tomorrow. I will be here all day Tuesday. Senator HATCH and Senator LEAHY will be working together. I will not let this happen without personal conversation with Senator DASCHLE. I talked with him briefly about it this morning. He won't be here tomorrow, but he will be back next Tuesday. It is a high holy day for the Jewish community. I believe he will be around during the day. We will try to work this out. I want to work this out. "I ain't got a dog in this fight," except I'm trying to do my job. So I want to do it in such a way that everybody is satisfied that we are being fair. I don't think it is fair that the nominees from California, New York, Utah, and Missouri all get balled up in this web. I hope we can avoid that.

Mr. LEAHY. Touching on another subject—and obviously the two leaders can determine what they want as far as

the cloture point is concerned—on the timing on Mr. Stewart's nomination, in my experience and my judgment, I say to my friend from Mississippi that: If we had worked out an arrangement to vote on these judicial nominees on the calendar, the sort of thing we are talking about doing now, working out the amount of time to be taken on Stewart would be the least of our worries; it would be a relatively short time because it would be all part of the same package.

We could spend more time talking about how much time there will be on the floor than probably what there would be at that time. That is going to be the least of our problems. If we get some of these judges worked out and some idea of when other judges are coming up, that is going to be the easy thing to do.

Mr. LOTT. I may have an idea or the staff, as quite often is the case, may have come up with an idea.

Mr. LEAHY. We have a constitutional impediment to the staff, I say to the leader.

Mr. LOTT. Let me explain what it is. Then I will explain what it means.

First of all, I ask unanimous consent that notwithstanding rule XXII, it be in order for the majority leader to file a cloture motion on the pending nomination at 5:30 p.m. on Tuesday, and if that motion is filed, that vote occur on Tuesday immediately following the 5:30 p.m. vote. Needless to say, this will give all Members until 5:30 on Tuesday to discuss the nomination.

What I am asking for is an opportunity to not file it, but by getting this agreement, it will be the same as if I had filed it. If we get an agreement, no problem. If we don't, then there will be a vote at 5:30.

Mr. LEAHY. That is OK with me.

Mr. REID. No objection.

The PRESIDING OFFICER. The majority has a previous unanimous consent request. Does he withdraw that?

Mr. LOTT. I do, and I propound this one which I just read, and ask for its consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Mr. President, I thank Senator REID and Senator LEAHY very much for their cooperation.

#### PROGRAM

Mr. LOTT. Mr. President, for the information of all Senators, there will be no further rollcall votes today.

The Senate will be in pro forma session on Friday, and there will be no session on Monday in recognition of the Jewish holy day.

The next rollcall votes will occur at 5:30 p.m. on Tuesday in a back-to-back sequence, if there are two votes, with the first vote on cloture on the bankruptcy bill, and the second vote on the nomination of Ted Stewart, if one is required.